

JAMES D. BERKLEY (SBN 347919), jdb@msk.com
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Attorney for Cognosphere Pte. Ltd.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re DMCA Subpoena to GitHub, Inc.

MISC. CASE NO. 3:23-mc-80256

**DECLARATION OF JAMES D.
BERKLEY IN SUPPORT OF REQUEST
FOR SUBPOENA TO GITHUB, INC.
PURSUANT TO 17 U.S.C. § 512(H)**

I, James D. Berkley, declare as follows:

1. I am an attorney at law, duly licensed to practice law in the State of California and before this Court. I am employed by the law firm Mitchell Silberberg & Knupp, LLP (“MSK”), counsel for Cognosphere Pte. Ltd. (“Cognosphere”). Among other things, Cognosphere is the exclusive licensee in the United States and other territories of copyright in and to the popular video game *Genshin Impact*, including without limitation artwork and audiovisual content associated therewith. MSK is authorized to act on Cognosphere’s behalf in the protection of copyrights and/or exclusive rights possessed by Cognosphere pertaining to *Genshin Impact*.

2. Cognosphere is requesting the attached proposed subpoena that would order GitHub, Inc. (“GitHub”) to disclose the identity, including the name(s), address(es), telephone number(s), and e-mail addresses(es) of the user “casksteven,” who maintains an account at the

1 Internet address <https://www.github.com/casksteven> (the “Casksteven GitHub Account”). The
2 purpose for which this subpoena is sought is to obtain the identity of this user, who has posted
3 infringing content on the Casksteven GitHub Account.

4 3. The information obtained will be used only for the purposes of protecting the rights
5 granted to Cognosphere under the Copyright Act.

6 4. Under 17 U.S.C. § 512(c)(3)(A), Cognosphere has submitted a takedown notice to
7 GitHub identifying the infringing content posted by the infringing user(s) and providing the
8 information required by 17 U.S.C. § 512(c)(3)(A). A true and accurate copy of the submitted
9 notification is attached hereto as **Exhibit 1**.

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct to the best of my knowledge, information and belief.

12 Executed at Los Angeles, California on October 6, 2023.

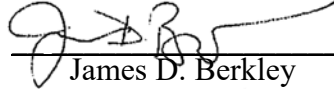
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16 James D. Berkley
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EXHIBIT 1

From: Berkley, James
Sent: Friday, October 6, 2023 2:14 PM
To: 'copyright@github.com'
Subject: Notice of Infringement Submitted Pursuant to 17 U.S.C. Section 512
Attachments: 2023-10-06 Notice of Infringement to GitHub, Inc. Pursuant to 17 U.S.C. Section 512(15874237.1).pdf

To Whom It May Concern:

I submit to you the following statement pursuant to section 512 of Title 17 of the U.S. Code and inform you that Mitchell Silberberg & Knupp LLP is authorized to act on behalf of Cognosphere Pte. Ltd. ("Cognosphere"), the owner of exclusive rights under copyright in and to the highly popular video game *Genshin Impact*, including visual art and other audiovisual materials embodied therein.

It has come to our attention that material infringing Cognosphere's exclusive rights in *Genshin Impact* is being made available via the GitHub.com website via the user account www.github.com/casksteven. Specifically, and without limitation, such infringing material includes copyrighted artwork being displayed via a repository available at <https://github.com/casksteven/Sweaty-Launcher> and the associated "ReadMe" file available at <https://github.com/casksteven/Sweaty-Launcher/blob/main/README.md>, which is being hosted at the following Uniform Resource Locator ("URL"):

- <https://user-images.githubusercontent.com/68674499/206622660-9c1590d3-8adb-4d1f-aed9-17639eca9c67.png> (the "Genshin Impact Artwork")

We request that GitHub take expeditious action to remove or disable access to the Genshin Impact Artwork as referenced above. Furthermore, it is requested that GitHub take appropriate measures to prevent further infringements by the party responsible, including pursuant to any "repeat infringer" policies maintained by GitHub.

I hereby state that I have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law. Additionally, I hereby state that the information in this notification is accurate, and under penalty of perjury, that I am the owner, or an agent authorized to act on behalf of the owner, of an exclusive right that is allegedly infringed.

I very much appreciate your cooperation in this matter. Please advise me regarding what actions GitHub has taken, or intends to take, by contacting me at the above address.

Very truly yours,
/s/ James D. Berkley



James Berkley | Attorney-at-Law

T: 310.312.3717 | jdb@msk.com

Mitchell Silberberg & Knupp LLP | www.msk.com

2049 Century Park East, 18th Floor, Los Angeles, CA 90067

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MITCHELL SILBERBERG & KNUPP LLP
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

James D. Berkley
Attorney-at-Law
(310) 312-3717 Phone
jdb@msk.com

October 6, 2023

VIA E-MAIL ONLY

GitHub, Inc.
Attn: DMCA Agent
88 Colin P Kelly Jr St
San Francisco, CA. 94107
copyright@github.com

Re: Notice of Infringement Submitted Pursuant to 17 U.S.C. Section 512

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GitHub, Inc
October 6, 2023
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I very much appreciate your cooperation in this matter. Please advise me regarding what actions GitHub has taken, or intends to take, by contacting me at the above address.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J.D. Berkley', with a long horizontal flourish extending to the right.

James D. Berkley
Attorney-at-Law for
MITCHELL SILBERBERG & KNUPP LLP

JDB/jdb